

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services)	CC Docket No. 98-67
For Individuals with Hearing and Speech)	CC Docket No. 90-571
Disabilities)	

THE COMMENT OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (PaPUC) hereby respectfully submits this Comment in response to the Federal Communication Commission's (FCC) Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking concerning Telecommunications Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities (TRS NOPR) issued on June 30, 2004 and published in the Federal Register on Wednesday, September 1, 2004 at page 53382-53385.

As an initial matter, the PaPUC's initial Comment should not be construed to be a binding decision that the PaPUC would reach in any contested on-the-record proceeding before the Commission. The views expressed herein may change in response to subsequent events such as the review of other Comments in this proceeding.

This PaPUC Comment makes several observations. These concern (1) the desirability of Video Relay Service (VRS); (2) the appropriate cost recovery methodology for VRS; (3) jurisdictional separation of costs; (4) mandatory imposition of VRS; and (5) service duration for VRS.

Desirability of TRS VRS Service. Pennsylvania has long promoted Telecommunications Relay Service (TRS). The PaPUC promoted TRS Service and created a TRS Advisory Board on May 29, 1990 at Docket No. M-900239. The PaPUC TRS Advisory Board recommends policies and programs to promote TRS in Pennsylvania. Our General Assembly subsequently enacted legislation mandating an equipment distribution program as part of our Pennsylvania efforts.

On October 7, 2004, the TRS Advisory Board submitted a letter supporting VRS in Pennsylvania. A copy of the October 7, 2004 letter is attached to this Comment.

The PaPUC believes that our TRS Advisory Board makes a compelling argument in favor of VRS. Our TRS Advisory Board experience suggests that VRS is at least equal to traditional TRS. Moreover, VRS is superior to traditional TRS for deaf and hard of hearing consumers without typing or language skills. Also, VRS for deaf and hard of hearing people is the most functional equivalent of traditional telephony for consumers who use American Sign Language (ASL) as their primary or preferred mode of communication. Moreover, the flow and speed of communication with VRS meets or exceeds current TRS technology because, unlike traditional Internet Protocol (IP) or traditional TRS, VRS communication is not restricted to the typing speed of an equipment user or Communication Assistant (CA).

For these reasons, the PaPUC urges the Commission to consider classifying VRS as a method for providing TRS to deaf and hard of hearing consumers.

The Appropriate Cost Recovery Mechanism and Jurisdictional Separation of Costs. As an initial matter, the PaPUC notes that several Internet Protocol service proceedings at the FCC are already decided or are under active consideration. Pending proceedings include the IP-Enabled Services at WC Docket No. 04-36, a Preemption Petition at WC Docket No. 03-211 and DA-2952 (the Vonage Petition), IP provider requests for access to numbers at CC Docket No. 99-200 (the SBC IP petition), and the legal classification of IP services at FCC 04-187 (the CALEA NOPR).

The FCC already decided that dial-up access to internet-protocol services e.g., the internet, is an interstate matter at 16 FCC Rcd 9151 (2001). The FCC also decided that Digital Subscriber Line (DSL) service, a service that relies on internet protocols, is an interstate tariff matter under F.C.C. Tariff No. 1. Finally, the FCC currently allocates the cost for internet protocol services on the public switched transportation network (PSTN) at 75% intrastate and 25% interstate under its Part 64 regulations.

The combination of pending and completed internet protocol proceedings suggest a legal and regulatory view of internet protocol services as interstate under the “mixed use” doctrine.¹ The PaPUC suggests that any FCC determination in this VRS IP proceeding be consistent with the FCC’s earlier and pending IP proceedings. The Commission should not, on the one hand, classify emerging internet protocol services as interstate in nature and then, on the other hand, continue to classify long-term traditional services under an obsolete interstate-intrastate formula for another IP service such as VRS. If DSL and internet access are interstate and VRS uses these interstate facilities or services, it suggests that VRS service is interstate. The FCC’s final decision in the pending IP Services docket should be applied to this VRS IP service as well. Either way, the PaPUC urges the FCC to ensure that interstate costs consistently follow interstate revenues. Any other approach would separate costs for some IP services under an obsolete interstate/intrastate formula but not for others.

Mandatory Imposition of VRS Service. As indicated above, the Commission should be consistent with decisions already made, or soon to be made, in other IP service proceedings. Those proceedings suggest that if other IP services are interstate in nature, this service may also be interstate. In regard to this VRS Service, the PaPUC advises the

¹*In re: Petition for Declaratory Ruling that Pulver.com’s Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, 19 F.C.C. R. 3307 (2004). In that decision, the FCC determined that exclusive federal jurisdiction prevails unless a service can be characterized as “purely intrastate” or it is practically and economically possible to separate interstate and intrastate components of a mixed service without negating federal objectives.

FCC that Pennsylvania's TRS Advisory Board supports regulatory treatment of VRS as a viable and much needed TRS service.²

Service Duration and Requirements for VRS Service. If the FCC's inclination is to classify internet protocol services as interstate, then the PaPUC recognizes that service quality and duration standards would most likely be interstate in nature. In that regard, the PaPUC suggests that the Commission establish minimum federal standards. Minimum federal standards should expressly allow a state to supplement those minimums so long as they do not unduly detract from any service nor result in excessive costs.

The PaPUC believes that the comments of the PaPUC TRS Advisory Board are instructive in that regard. The PaPUC TRS Advisory Board indicates that when VRS was first used, the National Exchange Carriers Association (NECA) and the FCC reimbursed VRS providers at the rate of \$18.00 a minute. The reimbursement rate has now dropped to the \$7.00 to \$8.00 range per minute of use. This produces an alleged deterioration in service quality, hours of service, and wait times for VRS service that now range from 10 to 45 minutes for service compared to relatively instantaneous service under the \$18.00 per minute reimbursement rate.

The PaPUC recognizes that VRS is not required to meet TRS standards e.g., 80 percent of calls must be answered within 10 seconds on 24/7 basis. Nevertheless, the PaPUC is concerned that deaf and hard of hearing persons who have difficulty with English or whose typing skills are nonexistent are not receiving commensurate service comparable to traditional TRS or earlier versions of VRS.

At the same time, the PaPUC recognizes that reimbursement rates in the \$18.00 or even in the \$7.00 to \$8.00 range exceed the rates currently charged for traditional TRS service in Pennsylvania. The resulting reimbursement differential is a very significant factor that must be balanced against service quality and comparable service obligations under federal law e.g., the Americans with Disabilities Act.

²See Attachment A filed with this Comment.

Moreover, the PaPUC is particularly concerned that any approach other than an interstate approach in resolving VRS service quality and comparable service concerns not result in additional unfunded interstate mandates. The PaPUC's current TRS service is certificated by the FCC, provides interstate and intrastate service based on easily obtained minutes of use information, and contains a supplemental equipment distribution program mandated by Act 34 of 1995 as amended by Act 181 of 2002. These obligations are funded by a surcharge, subject to annual recalculation, imposed on access lines. Any further internet protocol initiatives, including this attractive, important and desired VRS initiative, must be properly classified and funded accordingly.

The PaPUC recognizes that a federal approach to VRS may well subsume current traditional TRS service. If and when that occurs, it may, perhaps, be appropriate to determine if, and how, any reallocation should occur between state mandates on TRS and federal VRS IP efforts. Until then, however, this federal initiative on VRS IP service, like other IP services or facilities already considered by the FCC to be interstate in nature, should be federally funded.

Finally, the FCC should not permit a line-item surcharge on consumer bills to reimburse carriers for the cost of this VRS initiative. A federal line-item surcharge approach will result in state commissions having to spend state resources addressing consumer complaints about federal initiatives by unhappy or confused consumers. This already occurs with frequency regarding federal Universal Service Fund (USF) surcharges and internet service. The number of proceedings, typically dismissed by the PaPUC for lack of jurisdiction, will not decrease if another federal line-item surcharge is appended to state consumer bills.

The PaPUC thanks the Commission for providing an opportunity to file this Comment. The PaPUC may file a Reply Comment further refining or adjusting these suggestions based on review of other filed Comments in the matter.

Respectfully submitted,
Pennsylvania Public Utility Commission

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Dated: October 18, 2004

ATTACHMENT A

PENNSYLVANIA
TELECOMMUNICATIONS RELAY SERVICE ADVISORY BOARD

October 7, 2004

The Honorable Wendell F. Holland
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Chairman Holland:

At the September 16 quarterly meeting of the PA TRS Advisory Board, a motion was passed to request your support for the VRS (Video Relay Service) by sending comments to the FCC prior to their deadline for public comments.

The VRS for deaf and hard of hearing people who uses American Sign Language as their primary or preferred mode of communication is the most functional equivalent technology to appear on the TRS screen. Communication via the TRS requires the use of a camera and computer or a TV and video link camera combined with broadband connections via cable or DSL. The person wishing to use the VRS uses the equipment to call a VRS provider (AT&T, Sprint, MCI, CSD, Hamilton, HOVRS, Sorenson, etc.) that provides a bank of certified sign language interpreters, one of whom appears on the caller's computer or TV screen, much like the CA (Communication Assistant or Operator) that answers the caller using the TRS. The VRS user signs to the VRS interpreter appearing on the screen the phone number to call. The VRS interpreter, like the TRS CA, wears a headset and microphone and makes the call. After the usual connection and explaining the VRS to the person answering the phone, the sign language interpreter signs or interprets what the person is saying and verbalizes or reverse interprets what the VRS sign language user is signing.

The flow and speed of communication meets the functional equivalency requirements of FCC that far exceeds current TRS technology that relies on the use of the TDD (Telecommunication Device for the Deaf) or the IP (Internet Protocol) Relay services via the computer. The speed of the

traditional TRS or IP Relay communications is restricted by the typing speed of the TDD or CPU user as well as the CA's typing speed (minimum 60 WPM required of CA's), which at its best is far slower than typical voice communication. Voice communication between two hearing conversant is at minimum three times as fast and more typically 4 times faster. The interaction between the person using sign language and the person talking via the assistance of the VRS interpreter via the VRS is equally as fast.

When VRS was first used, NECA with the approval of FCC was reimbursing the VRS providers at the rate of at least \$18.00 per minute. With this reimbursement rate, VRS users were getting interpreters on the screen in less than 30 seconds and the services were offered 24 hours per day, 7 days per week. Although the VRS had not yet been approved by FCC as a viable communications relay service, the VRS providers were meeting, if not exceeding, most of the rules and regulations required of the TRS providers. Because of the superiority of this service compared to the TRS, the VRS industry grew rapidly. In the last year, FCC has cut the reimbursement rate to \$14.00 per minute to \$8.00 per minute to almost \$7.00 per minute. As the rates were reduced, the quality of the VRS has rapidly deteriorated. In order to survive, the VRS providers have had to cut back on the numbers of interpreters in their phone bank as well as the hours that the services are available. Now the wait is often more than 10 minutes and sometimes as long as 45 minutes before an interpreter appears on the CPU or TV screen and the hours are restricted to day times and week days only, when demand is at its peak. Since VRS is not required to meet the FCC rules and regulations that apply to the TRS, the cutbacks are legitimate but the deaf or hard of hearing person who has difficulty with English and or typing has suffered.

Since the FCC has requested public comments, the Advisory Board requests that the PUC commissioners use the powers of the state utility agency to ask that FCC approve the VRS as a viable and much needed service, require the VRS providers to meet the requirements similar to that of the TRS, (i.e. 80 percent of the calls must be answered within 10 seconds, 24/7, etc.), and to provide appropriate reimbursement to the VRS provider so that they meet the requirements.

The support and guidance of the PUC representatives participating in the PA TRS Advisory Board meetings have

been and continues to be a source of inspiration to the consumer members of the board and we look forward to the continued impressive support of the Commissioners.

Sincerely yours,

Diana Bender, Chairperson
Lawrence J. Brick, Board Member
PA TRS Advisory Board

cc: Vice Chairman Robert K. Bloom
Commissioner Glen R. Thomas
Commissioner Kim Pizzingrilli